

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Communications Assistance for)	ET Docket No. 04-295
Law Enforcement Act and)	
Broadband Access and Services)	RM-10865

**JOINT REPLY COMMENTS OF
UNITED UTILITIES, INC.,
UNITED-KUC, INC. AND UNICOM, INC.**

United Utilities, Inc. (“UUI”), United-KUC, Inc. (“KUC”) and Unicom, Inc. (“Unicom”) hereby submit these Joint Reply Comments on the Commission’s Notice of Proposed Rulemaking (“NPRM”) of August 9, 2004 in the above-referenced proceeding. The NPRM addresses issues presented in the Joint Petition for Expedited Rulemaking (“Joint Petition”) filed before the Commission by the Federal Bureau of Investigation, U.S. Department of Justice and the United States Drug Enforcement Agency (collectively, “Law Enforcement”). As discussed below, UUI, KUC and Unicom endorse the views of numerous parties that made it clear to the Commission in the initial comment round that certain rules proposed by the Commission in response to the Joint Petition would impact inequitably and unduly burden small and rural carriers. UUI, KUC and Unicom submit that the Commission should use the present rulemaking as an opportunity to revisit its implementation of the Communications Assistance for Law Enforcement Act (“CALEA”) in order to alleviate the unfair impact such implementation has had on the interests of small and rural carriers.

I. INTRODUCTION

UUI, KUC and Unicom (hereinafter, "United Companies") are affiliated telecommunications companies under the common ownership of United Companies, Inc., a native-owned Alaska corporation. The United Companies serve remote rural communities in Alaska's Yukon-Kuskokwim Delta region. UUI is a wireline local exchange carrier providing services to approximately 7,000 access lines in 56 native villages scattered over a distance of approximately 200,000 square miles. The number of subscribers in UUI's network average 125 per village. Of the villages served by UUI, only St. Mary's maintains a police presence of any regularity.

KUC is also a wireline local exchange carrier providing services to approximately 5,000 access lines in Bethel and the native villages of McGrath and Unalakleet in western Alaska. Only Bethel operates a permanent local police force and Unalakleet has some form of established police presence. Both UUI and KUC are "rural telephone companies" within the meaning of 47 U.S.C. § 153(37)

Unicom is an analog wireless carrier providing services to approximately 500 subscribers in Bethel and 15 remote native villages in western Alaska. Of the 16 communities served by Unicom, only Bethel and St. Mary's operate local police forces of any regularity.

On January 30, 2004, each of the United Companies filed a petition for relief under CALEA Section 107(c) with regard to packet-mode surveillance capability requirements imposed pursuant to Section 103 of CALEA. None of the United Companies has a record of ever having received a request for electronic surveillance or other communications assistance relative to its system from any federal law enforcement agency, and UUI and KUC have, in

recent years, received only a couple of requests from local police departments seeking support for subscriber-generated trace and trap requests. In fact, very few of the small communities served in the aggregate by the United Companies have designated 911 public safety access points, let alone established law enforcement agencies.

II. DISCUSSION

In its response to the Joint Petition, the Commission has tentatively rejected Law Enforcement's efforts to establish binding "benchmarks or schedules" for carriers' compliance with Commission-approved equipment standards meeting CALEA capability requirements. The Commission, however, has also vitiated the procedural safeguards in the Act for carriers by tentatively concluding that it will effectively no longer accept petitions for extensions of time within which to comply with CALEA-compliance requirements pursuant to CALEA Section 107(c) for equipment installed after October 25, 1998, and at the same time tentatively decreeing that carriers will face a "heavy burden" of demonstrating why they should qualify for financial support under Section 109(b) of the Act for bringing their systems into compliance. NPRM, ¶¶ 87, 97-98, 125. In reaching these tentative conclusions, the Commission acknowledged that Law Enforcement's request that carriers recover their costs of compliance solely through assessments on their customers could place "unique burdens" on the customers of small and rural carriers, and asked for specific comment on how cost-recovery issues connected to its implementation proposals should be conformed to the needs of this sector. NPRM, ¶¶ 120, 131, 134.

The United Companies are pleased to see that a number of commenting parties have accepted the Commission's invitation and explained that the economic burden of its latest proposed approach to securing carrier compliance with CALEA equipment standards will

inequitably impact small and rural carriers, with their limited subscriber bases. As these commenting parties have made clear, the cost of upgrading equipment is not proportionate to the size of the carrier. As a result, carriers with smaller subscriber bases will face higher per-subscriber charges for bearing these costs than will larger carriers.¹

These commenting parties have also appropriately and accurately reported that small and rural carriers, like the United Companies, lack meaningful negotiating power in relation to manufacturers of telecommunications equipment and, as a result, are in no position to try to influence the development of CALEA-compliant technical solutions or to acquire such equipment in a time frame under their control. Manufacturers instead understandably respond and give priority to the demands and needs of larger carriers, with more substantial purchasing and bargaining power. Thus, it is unrealistic for the Commission to expect small and rural carriers to be able to demonstrate any kind of “active and systematic” program for securing CALEA-compliant equipment in a time frame established by regulatory fiat, even if they had the financial resources to do so.² In addition to their lack of meaningful market power in this regard, small and rural carriers are also generally characterized by a lack of adequate internal personnel and administrative resources to sustain the “systematic” level of negotiation with the manufacturing industry that the Commission proposes in the NPRM it will require.³

The United Companies can attest that these criticisms of the Commission’s proposals in the NPRM are apt and well founded. The United Companies’ attempts to secure information

¹ See Comments of Rural Telecoms Providers, at 8; Rural Telecommunications Group, at 4; Rural Cellular Association, at 2. See also Comments of GVWN Consulting, at 7-8.

² See Comments of OPASTCO, at 2; National Telecommunications Cooperative Association (hereinafter, “NTCA”), at 8; Rural Telecoms Providers, at 2-3; Coalition for Reasonable Rural Broadband CALEA Compliance, at 4-5, 9.

³ Comments of NTCA, at 10; Rural Telecommunications Group, at 5.

regarding the existence and availability for delivery of CALEA-compliant equipment have proven time-consuming and of limited success. Efforts to comply with existing Commission CALEA policies already strain the United Companies' limited administrative resources; the more rigorous and "systematic" standards that the Commission now proposes for the industry at large would probably not be sustainable. GVWN Consulting has suggested that manufacturers are unlikely to accord serious attention to any carrier with less than 50,000 subscribers.⁴ It is to be noted that the United Companies collectively support a fraction of such a hypothetical subscriber base, thereby exacerbating this handicap. Rather than constructively incentivizing carriers to bring themselves into compliance with industry CALEA standards, the United Companies agree that the Commission's NPRM proposals are more likely to have the opposite effect for the small and rural carrier sector. Faced with a choice of having to meet unrealistic CALEA compliance schedules or to suffer regulatory sanctions, the United Companies would consider the need to terminate service to certain of the most remote and under-served elements of their subscriber base. This result would not appear to advance the public interest.⁵

These realities, combined with the fact that rural carriers tend to generate less law enforcement requests for surveillance and other forms of support,⁶ lead to the clear conclusion that the Commission should not attempt to impose uniform CALEA requirements across the broad telecommunications industry as a whole, but to realize that differing standards of compliance are appropriate for different groups of carriers, defined in the first instance by their sizes. The United Companies submit that the Commission's wholesale effort in the NPRM to marginalize the roles of Sections 107(c) and 109(b) are inappropriate, at least in regard to how

⁴ Comments of GVWN Consulting, at 5.

⁵ See Comments of Rural Telecoms Providers, at 6-7; Coalition of Reasonable Rural Broadband CALEA Compliance, at 7-8.

⁶ Comments of OPASTCO, at 3; Rural Cellular Association, at 3.

they will impact small and rural carriers.⁷ In the view of the United Companies, this proposal is, in fact, inconsistent with the directives of the Regulatory Flexibility Act. The Commission's effort to address this statutory requirement in Appendix B to the NPRM is simply not adequate in light of the adverse impact which its proposed procedures will exert on small and rural carriers, as demonstrated in the comments that the United Companies hereby endorse.⁸

The United Companies urge the Commission to take the opportunity presented by the present rulemaking to revisit its earlier efforts to establish procedures for CALEA compliance -- which have generated, by the Commission's own acknowledgment, thousands of requests for extension of time -- in order to set realistic requirements for at least the most needy sectors of the industry. For carriers, like the United Companies, serving subscriber bases of less than 10,000 each, the Commission should consider foregoing any mandatory time period for compliance -- let alone one as unrealistic as 90 days -- and permit carriers in this category to pursue programs of negotiated compliance with Law Enforcement, such as the Flexible Deployment Program that the FBI continues to administer for circuit-based technologies. In those cases in which Law Enforcement requires surveillance or other assistance support from these carriers prior to the time they have, through their agreed upgrading procedures, acquired the necessary capabilities, it can utilize Section 109(b) to fund accelerated acquisition of the necessary equipment.⁹ The likelihood that Law Enforcement will ever have to rely on this recourse is remote, given the comparatively small incidence of surveillance and other law assistance requests received by small and rural carriers.

⁷ See Comments of NTCA, at 2, 6-8; Rural Telecommunications Group, at 7; Rural Telecoms Providers, at 10-12

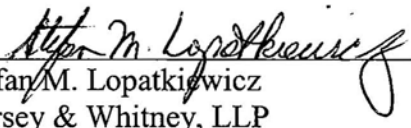
⁸ Compare Comments of NTCA, at 4, n. 6; Rural Cellular Association, at 4. See also Comments of Rural Telecommunications Group, at 4.

⁹ At a minimum, the United Companies agree that it is inequitable to impose on small, rural carriers the current application fee under Section 109(b) of the Act. See Comments of Rural Telecoms Providers, at 5; NTCA, at 8-10.

If the Commission cannot see its way to tailoring its rules to fit the specific needs of this unique sector of the telecommunications industry, which is bringing service to the most remote areas of the nation, then the United Companies would argue, in the alternative, that some form of national, end user fee should be adopted to help spread the cost of CALEA compliance more equitably.¹⁰ A funding mechanism of this nature would be equitable to carriers of all sizes, in that it would be imposed at the same rate on all subscribers, with the understanding that the proceeds of such an assessment would, like the universal service funding mechanism, be distributed to mitigate the inequitable, per-subscriber cost of implementing CALEA compliance which small and rural carriers are otherwise already experiencing.

Respectfully submitted,

UNITED UTILITIES, INC.
UNITED-KUC, INC.
UNICOM, INC.

By: 
Stefan M. Lopatkiewicz
Dorsey & Whitney, LLP
Suite 400 South
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20011
(202) 442-3553
Their Attorneys

¹⁰ The Commission invited comment on such a mechanism in the NPRM, at ¶ 127. See Rural Cellular Association, at 2.